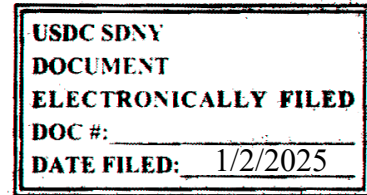


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
In re:

TERRORIST ATTACKS ON
SEPTEMBER 11, 2001

03-MD-01570 (GBD)(SN)

ORDER

-----X
SARAH NETBURN, United States Magistrate Judge:

This document relates to:

Burnett v. Islamic Republic of Iran, No. 15-cv-9903 (GBD)(SN)

The Estates of Shuyin Yang and Yuguang Zheng seek damages for the decedents' conscious pain and suffering before their deaths as passengers on American Airlines Flight 77, which crashed into the Pentagon. See ECF No. 9733. Because the decedents are not U.S. nationals, their claims are brought pursuant to 28 U.S.C. § 1605B and rely on state law. The Administrator of these estates asserts that Virginia law applies, as the place of the tort.

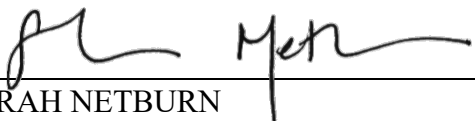
In the Administrator's brief, she seeks damages pursuant to Virginia's survival statute and "choose[s]" to forego wrongful death damages. See ECF No. 9734 at 14. Under Virginia law, however, "the wrongful death statute provides the exclusive method for recovery 'when a tort victim dies of [his or] her injuries.'" Smith v. Town of S. Hill, 611 F. Supp. 3d 148, 192 (E.D. Va. 2020) (quoting El-Meswari v. Washington Gas & Light Co., 785 F.2d 483, 490–91 (4th Cir. 1986)). See also Lucas v. HCMF Corp., 384 S.E.2d 92, 94 (Va. 1989) (when death results from the injury complained of, "the recovery must be sought under Code § 8.01–50, the wrongful death statute"). As relevant here, Virginia's wrongful death statute does not appear to

allow for conscious pain and suffering damages of the decedent. El-Meswari, 785 F.2d at 490–91.

Burnett Plaintiffs’ counsel is accordingly directed to file a letter supplementing the authority for their claims that (1) a Plaintiff can choose to proceed under Virginia’s survival statute even when the death at issue was caused by the Defendants’ conduct; and (2) the estates may recover decedents’ pain and suffering damages under Virginia law.

Counsel should file the letter no later than Friday, January 10, 2025. To the extent the Plaintiffs’ Executive Committee wishes, it may also file a letter at that time.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: January 2, 2025
New York, New York